Regulation (39-) 22-604.1. Withholding Tax.

Registration. Every person, firm, corporation, partnership, etc., who becomes subject to the provisions of this Act as an employer must file an Employer's Registration Report indicating that he will be required to withhold and shall request the Department of Revenue to assign a number identifying him as a withholding agent. This number will appear on the first return mailed by the Department to the employer. The number should also be noted on any inquiries to the Withholding Tax Section, Department of Revenue, by an employer. Any employer previously registered with the Department of Revenue who ceases business or who no longer is required to withhold, shall immediately notify the Department of such circumstances.

If an employer goes out of business or otherwise permanently ceases to pay wages or other compensation, the employer should notify the Colorado Department of Revenue, Withholding Tax Section, immediately. Proper forms and information will be mailed upon receipt of such advice. In order to close the employer's account, it is necessary to submit:

- (i) The return of income tax withheld covering payroll since the previous report through the dates of last payment of wages (plus any adjustments for prior periods) together with payment in full.
- (ii) Annual reconciliation report for the period from January 1 through date of last payment of wages.
- (iii) Wage and tax statements showing all remuneration paid and tax withheld for each employee during the current year.

Regulation 39-22-604.3. Requirement to Withhold.

(a) Who Must Withhold.

- (1) Any employer doing business in Colorado must withhold Colorado income tax from wages paid to any employee who is a Colorado resident or a nonresident of Colorado working in Colorado if such wages are subject to federal income tax withholding.
- (2) Withholding is required of employers situated outside the state upon wages, commissions, or other emoluments paid to an employee for services performed within the state, even though the employee may be a nonresident and the employee's employment in Colorado may be of short duration.
- (3) Under Colorado law the same exclusion from withholding and the same withholding exemptions exist as under the Internal Revenue Code. Therefore, agricultural workers and certain other employees specifically excluded from withholding under the Internal Revenue Code will be excluded under the Colorado Act.
- (4) The federal W-4 form should be used to determine the number of exemptions to be used for Colorado withholding tax purposes.
- (5) Whenever withholding is required under federal income tax law, the withholding deductions must be made for all persons subject to Colorado withholding.

(b) Interstate Commerce and Transportation Employees.

- (1) An air carrier must withhold Colorado income tax from any interstate airline employee who is a resident of Colorado or a nonresident who earns over fifty percent of his or her wages in Colorado. An air carrier **employee** is deemed to have earned more than fifty percent of his or her pay in Colorado if the flight time worked by that **employee** within Colorado exceeds fifty percent of the total flight time worked by that **employee** while employed during the calendar year.
- (2) A rail carrier subject to regulation by the Surface Transportation Board must withhold Colorado income tax from any interstate employee of any railroad, express company or sleeping car company who is a resident of Colorado.
- (3) A motor carrier subject to regulation by the Surface Transportation Board or a motor private carrier must withhold Colorado income tax from any **employee** who is a resident of Colorado and performs his or her regularly assigned duties on a motor vehicle **in two or more states.**
- (4) A water carrier subject to regulation by the Surface Transportation Board must withhold Colorado income tax from any interstate employee who is a resident of Colorado
- (5) The employers described in this section (b) are not required to file an annual information report with the state of Colorado with respect to any employee described in this section (b) unless more than fifty percent of the compensation paid to such airline employee during the taxable year was earned in Colorado, or unless such employee was a resident of Colorado.

For the purposes of this section (b) "compensation" shall mean all monies received for services rendered by an employee, as defined in this regulation in the performance of his duties and shall include wages and salaries.

- (c) Nonresident Employees
- (1) Except for those employees described in section (b), if the duties of a nonresident employee involve work both within and without the state of Colorado, tax is to be withheld from that portion of total wages primarily allocable to Colorado. The method of allocation must be submitted to and approved by the Director of Revenue.
- (2) If the activities of such employee or agent within Colorado are not in the regular course of the employer's business or if such activities are of extremely short duration, or if such employee or agent is assigned on a variable basis so that consistent and regular division of the duties performed within and without Colorado cannot be determined for withholding purposes, the employer may apply to the Executive Director for specific release from the requirement to withhold giving full particulars of the nature and extent of his Colorado venture and related employment.
- (3) Employers, to be relieved of withholding on employees who meet the foregoing conditions, must first secure from the employees an affidavit setting forth the name, address, state of residence, and domicile of the employee. The employer shall, by such reasonable means as are available to the employer, verify the statement contained in the said affidavit and shall thereupon forward such affidavits to the Department of Revenue to support the exemption from withholding claimed by the employee.

- (4) At the end of the calendar year, the employer will prepare an information report for each employee so exempted, showing in the wage block the total annual wage and wage allocable to Colorado. These reports shall be forwarded to the Department of Revenue on or before March 15 of the following year.
- (5) Failure of any nonresident employee to file a Colorado income tax return and to pay the tax, if any is due, within the time prescribed by law, even though such employee has been granted an exemption from withholding, shall void the exemption from withholding and the employer shall be required to withhold Colorado income tax as herein provided.
- (6) Except as provided by Public Law 91-569, no exemption from withholding applies to the wages of an employee who is performing all of his services within Colorado for a definite period of time and who thereafter is reassigned to performing services outside of the state of Colorado.

Regulation 39-22-604.4. Withholding tax filing periods and due dates.

(a) With respect to Colorado income tax attributable to payments made after December 31, 1993, an employer is either a quarterly filer, a monthly filer, or a weekly filer based on an annual determination; or in exceptional cases, a seasonal filer. An employer must file withholding tax returns and/or remit taxes withheld under one of four rules: The Quarterly rule in paragraph (b)(2) of the section, the Monthly rule in paragraph (b)(3) of this section, the Weekly rule in paragraph (b)(4) of this section, or the Seasonal rule in paragraph (b)(5) of this section.

(b) **Determination of status.**

- (1) The determination of whether an employer is a quarterly, a monthly, or a weekly filer for a calendar year is based on an annual determination made by the executive director and depends upon the aggregate amount of Colorado withholding tax reported by the employer for the lookback period as defined in paragraph (b)(6) of this section.
- (2) **Quarterly filer.** An employer is a quarterly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is less than \$7,000.
- (3) **Monthly filer.** An employer is a monthly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is at least \$7,000 but not more than \$50,000. The Executive Director, upon application therefor, may approve reclassification of monthly filers to a quarterly filing status if necessary to meet the "no more stringent than corresponding federal requirements" provision of C.R.S. 39-22-604(4).

- (4) **Weekly filer.** An employer is a weekly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is more than \$50,000.
- (5) **Seasonal filer.** An employer is a seasonal filer for the entire calendar year if the business is not operating for the entire calendar year and if there is no Colorado withholding made during that part of the year during which the business is not operating.
- (6) **Lookback period.** The lookback period for each calendar year is the twelve-month period ending the preceding June 30. The aggregate amount of Colorado withholding tax liability as originally filed for the lookback period will determine the status as a quarterly, monthly, or weekly filer. New employers shall be treated as having zero tax liability for any part of the lookback during which they did not exist as an employer.

(c) Due dates.

- (1) **Quarterly rule.** An employer that is a quarterly filer must file a Colorado withholding tax return and pay the Colorado tax withheld for the calendar quarter on or before the last day of the month following the close of the calendar quarter. A return must be filed for each quarter even if no taxes have been withheld.
- (2) **Monthly rule.** An employer that is a monthly filer must file a Colorado withholding tax return and pay Colorado tax withheld for the month on or before the fifteenth day of the following month. A return must be filed for each month even if no taxes have been filed.
- (3) **Weekly rule.** An employer that is a weekly filer must remit any Colorado withholding taxes accumulated as of any Friday on or before the third business day following such Friday.
- (4) **Seasonal rule.** In order to file on a seasonal basis, the employer must obtain approval from the Department of Revenue and supply the scheduled months in which there is withholding. An employer that is a seasonal filer must file a Colorado withholding tax return and pay the Colorado tax withheld on or before the fifteenth day of the month following each month of operation. Returns must be filed for scheduled months of operation even if no taxes have been withheld.
- (5) Filing and payments are required only on Colorado Department of Revenue business days. If the due date falls on any day that is not a business day, the taxes will be treated as timely paid if paid on the first business day thereafter.
- (6) **Change of status.** When an employer's Colorado withholding tax filing status is required to be changed as a result of a new lookback period, any resulting change in filing status shall become effective on January 1 of the following year.

- (d) Required withholding from winnings, which shall include gaming and racing, shall be filed with a return and remitted on a monthly basis on or before the fifteenth of the following month.
- (e) **Electronic funds transfer.** Any employer who has an annual estimated withheld tax liability of more than fifty thousand dollars must remit withheld tax by electronic funds transfer(EFT). The annual estimated withheld tax will be based on the tax liability for the most recent twelve month period ending June 30. The electronic funds transfer shall be made using standard banking conventions as outlined in the application and agreement for electronic funds transfer between the taxpayer and the Department.

The publication DRP-5782 describing the EFT program and Form DR-5785, "Authorization For Electronic Funds Transfer (EFT) For Tax Payments" may be examined at any Colorado State Publications Depository Library (see http://www.cde.state.co.us/stateinfo/sldepsit.htm for a listing of locations). Copies of the publication DRP-5782 describing the EFT program or Form DR-5785, "Authorization For Electronic Funds Transfer (EFT) For Tax Payments" may be obtained from the Department Forms Room, on the first floor at 1375 Sherman Street, Denver, Colorado 80203 and via the Department internet web site at: www.revenue.state.co.us Scroll down the web page to the listing of forms by form number, these forms appear near the bottom of the list.

The references to the rules and conventions of the National Automated Clearing House Association in this regulation do not include later amendments or editions of this referenced material. Certified copies of these rules and conventions are on file at the Department of Revenue and may be obtained or examined by contacting the Manager of Deposit Control, 1375 Sherman Street, Denver, Colorado 80261.

Regulation 39-22-604.5.

Effective January 1, 2000, all state tax withholding must be deducted in whole dollar amounts. Employers may utilize current withholding tables or may deduct whole dollars from employee paychecks by rounding all withholding deductions to the nearest dollar. Amounts less than fifty cents must be rounded down to zero and amounts from fifty to ninety-nine cents must be rounded to the nearest dollar. As a result of deducting whole dollar amounts from employees' paychecks, amounts shown on tax returns, employee statements (including W-2s and 1099s), annual reconciliation reports, and all books and records of the employer must be shown in whole dollars.

Regulation 39-22-604.6. Withholding Tax Statements

(a) **Annual Reconciliation Reports.** On or before the last day of February following the close of the calendar year or within 30 days of cessation of the employer's business, the employer must file an annual reconciliation report which is a summary of the withholding payments made to the Colorado Department of Revenue, and the reconciliation of such payments to the tax withheld as shown by the individual wage and tax withheld as shown by the individual wage and tax statements submitted. Exception -

The employer need not file an annual reconciliation report if the employer files the state copies of wage and tax statements via magnetic media or modem-to-modem transfer.

(b) Wage and Tax Statements.

- (i) Generally the employer must complete a wage and tax statement for each employee. The statement must show: total wages paid and state and federal tax withheld during the calendar year or portion thereof; the name, address, and social security number of the employee; and the name, address and federal identification number ("EIN" for "FEIN") of the employer. Employers that are not required to file the federal copies of their W-2s on magnetic media may file the state copies of the wage and tax statements on the prescribed paper form. Any employer that is required to file the federal copies of their W-2s on magnetic media must file the state copies of the wage and tax statements on magnetic media or must submit such statements electronically via the Department's modem-to-modem program.
- (ii) Due dates for employee copies One copy of the wage and tax statement must be given to the employee for his or her records and another copy must be given to the employee to file with his or her state income tax return. These copies must be given to the employee within thirty-one days of the close of the calendar year or within thirty-one days of the date of termination of employment.
- (iii) Due dates for state copy The copy to be sent to the state must accompany the annual reconciliation report, or if no annual reconciliation report is required, must be filed by the last day of February. Exception The state copies of the wage and tax statements, if filed by moben-to-modem transfer must be filed by the last day of March.

(c) Rules for substitute wage and tax statements.

- (i) Form The State of Colorado has adopted the National Association of Tax Administrator's recommended form for use in printing combined federal-state wage and tax statement forms. The State of Colorado no longer requires the calendar year to be preprinted in the upper left corner of the form. The employer may pre-print or crash print the required year, the state identification number, the name of the state and the form number in a manner approved by the Department of Revenue, but the employer may not crash print any of the lines or headings of the form. The employer also may include the audit block shown on the federal six part Optional Wage and Tax Statement.
- (ii) Combination Form Modifications A combination form which incorporates copy number one and copy number two of said recommended forms (containing a combined federal-state wage and tax statement) and consisting of six or more copies, having the same format except for federal instructions, and also providing a file copy for both employer and employee, may be approved for one year upon submission. If any Colorado employer responsible for filing a wage and tax statement form for his or her employees wishes to modify any approved form in any way, approval of such modification will be required in advance of printing and use.

Regulation (39-) 22-604.17.

Every person making a payment of winnings within Colorado which are subject to withholding for federal income tax purposes shall withhold four percent of such winnings and shall submit such withholdings to the Colorado Department of Revenue as though such amount withheld were amounts withheld from wages under the provisions of Section 39-22-604(3), Colorado Revised Statutes.